BRITISH COLUMBIA

Ministry of Community, Aboriginal and Women's Services

Housing Policy Branch

Life Lease And Long Term Lease Housing

Discussion Paper
April 2003

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1. Introduction

Life lease is a relatively new form of tenure in British Columbia being marketed to seniors. It is not subject to most legislative protections now being provided to tenants with shorter-term tenancies or to condominium owners. There are also other long term leasing arrangements (e.g. 99 year leases) in which the lessees are largely unprotected by legislation; these are marketed to the general population.

Leases on Crown land, including First Nation reserve lands, fall within federal government jurisdiction and are not addressed in this consultation.

The Ministry of Community, Aboriginal and Women's Services is taking a lead role in researching and developing possible strategies to respond to life lease and long term lease issues. The Ministry of Public Safety and Solicitor General, which is responsible for residential tenancy legislation, and the Ministry of Finance, which is responsible for condominium and real estate legislation, have also been consulted.

We Invite Your Participation!

This paper provides background information on how life leases and long term leases work and issues we have identified. We would like to invite your participation in a discussion of these issues.

How to Participate:

1. Read this discussion paper and provide your comments directly to the Housing Policy Branch. You can also read the paper and provide your comments electronically through the Ministry of Community, Aboriginal and Women's Services' website:

   www.mcaws.gov.bc.ca/housing/

2. Attend one of the four half day consultation sessions to take place in late April 2003. Sessions will be held in Victoria, Abbotsford, Kamloops and Vancouver.

The Public Consultation will facilitate:

- Informed discussions;
- Identification of issues and consumer protection principles; and
- Information to help guide government planning on consumer protection issues.

How to Reach Us

Housing Policy Branch
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Victoria BC V8W 9N7
Telephone 250 387-7088
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E-Mail HSGPOLBR@gems1.gov.bc.ca

Note: Should you wish to attend one of the consultation sessions please contact the Housing Policy Branch to indicate the location of the session you would like to attend. Due to seating capacity, it may be necessary to limit the number of attendees. Priority will be given to lessors and leaseholders.

Although submitted comments will not be posted for public view, freedom of information legislation may require government to make comment correspondence available.

105-03313/

2. *Background*

What is a Life Lease?

Life lease is a form of housing tenure that is neither a traditional monthly rental or homeownership. A life lease involves the owner granting someone the exclusive right to occupy a dwelling for the life of the occupant. Ordinarily, the occupant prepays all or a substantial portion of the occupancy cost in advance (referred to as the entrance fee) and a monthly maintenance fee payment. Seniors (persons aged 55 and over) are the primary market of life lease housing. The entrance fee (or a portion thereof) is usually refundable upon the termination of the lease or death.

How Life Leases Work

- To date, all life lease developments in British Columbia are owned and operated by non-profit groups (e.g. non-profit housing organizations, service clubs, ethnic community groups, and faith-based groups).
- Private sector involvement in life leases has been limited to construction or consulting contracts, rather than the ownership and operation of buildings.
- A life lease purchaser is required to make an investment ranging from 25% to 100% of the unit cost.
- The leaseholder and lessor[1] sign a life lease agreement which structures their relationship. The agreement is drawn up by the lessor and is non-negotiable.
- The life lease agreement details the conditions of occupancy and what happens when the lease ends. Sometimes the lease is returned to the lessor and sometimes the leaseholder sells it to another purchaser. Lessors usually retain a portion of the entrance fee or the leaseholder's selling price.
- Some life lease agreements are in place for the duration of the occupant's life. Other agreements have multiple durations, such

[1] In this document the owner of a development is referred to as the lessor.

as occupant's life, or a specified number of years, whichever is longer.

- Leaseholders pay a monthly maintenance fee as per the lease agreement, similar to those paid by owners of strata units. Fees usually cover administration, reserve funds, maintenance, property taxes, and utilities. In British Columbia, maintenance fees range from $100 to $200.
- In about one quarter of the developments in British Columbia, meals and other support or hospitality services are available at additional cost.

Regulation of Life Leases in British Columbia

- Life leases have elements in common with both traditional rental properties and strata unit ownership. They fall outside the scope of the *Residential Tenancy Act* (RTA)[2] and, unless they are contained within strata developments, the *Strata Property Act*.
- About a third of the existing life leases are contained within strata developments governed by the *Strata Property Act*. In this situation, titles to all the units are in the name of the lessor. Section 148 of the *Strata Property Act* grants leaseholders most of the strata corporation rights that the owner would have, if the lease is for a set term of three years or more.
- The disclosure provisions in Part 2 of the *Real Estate Act* (REA) apply to all residential leases with a term greater than three years. The Superintendent of Real Estate (the Superintendent) accepts disclosure statements for life lease developments for filing.
- The REA requires that a leaseholder's deposit money not be used for construction costs. The Superintendent has the authority to order a developer to stop marketing if deposits are not secured or if purchasers are not given a secure legal interest in the property. The Superintendent can also prohibit advertising that creates an unwarranted impression that a life lease development carries no financial risk.

[2] Recent amendments to the RTA removed a requirement that tenancy agreements of greater than 20 years receive prior approval from the local government through a bylaw.

- Title to the life lease development remains in the name of the lessor. Registering a life lease interest attracts the provincial Property Transfer Tax. Many leaseholders' life lease interests are not registered in the Land Title Office. In some cases, the lease does not allow it and, in others, the leaseholder may be unaware that the lease can be registered on the title or may not wish to register it.
- Life lease *developments* are covered under the *Homeowner Protection Act* and developers are required to obtain third-party warranty insurance.
- Life lease *agreements* in BC are subject to the principles of contract and common law. Due to the absence of a specific regulatory structure for life leases, the contents of lease agreements can vary widely from one development to another. Disputes involving life leases can be formally resolved only through the courts.

What Is a Long Term Lease?

Long term lease is a form of housing tenure that is neither a traditional monthly rental or homeownership. It involves the owner of a piece of land granting another person the right to occupy a housing unit for a fixed period (longer than 20 years) in return for a lump sum payment and monthly maintenance fee payments. Unlike life leases, seniors are not the primary market. The majority of long term leases occur as the result of a building owner converting month-to-month rental suites to long term leases.

How Long Term Leases Work

- The leaseholder purchases a right to occupy a unit in a long term lease building;
- Purchase prices tend to be lower than for an equivalent strata unit;
- The value of the lease normally declines as the lease ages and approaches the termination date;
- In most cases, the lease agreement is drawn up by the lessor and is non-negotiable;

- The lease agreement describes rights of the lessor and leaseholder and structures their relationship;
- The duration of a lease is specified in the lease agreement (e.g. 99 years);
- Long term lease developments are frequently owned and operated by private lessors;
- Occupant pays monthly maintenance fees for building services and utilities. These fees cover administration, reserve funds, maintenance, property taxes, and utilities; and
- Long term lease interests are resold by the existing leaseholder at market prices.

Regulation of Long Term Leases in British Columbia

- Long term leases have elements in common with both traditional rental properties and strata unit ownership. They fall outside the scope of the *Residential Tenancy Act* (RTA)[3]. They are typically not contained within strata developments, and therefore not subject to the *Strata Property Act*.[4]
- The disclosure provisions in Part 2 of the Real Estate Act apply to all residential leases with a term greater than three years. The Superintendent of Real Estate receives very few disclosure statements concerning long term leases and there is no formal mechanism available at this time for gathering comprehensive and detailed information.

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[3] Recent amendments to the RTA removed a requirement that tenancy agreements of greater than 20 years receive prior approval from the local government through a bylaw.

[4] The Housing Policy Branch is not aware of any developments where the developer leases conventional fee simple strata lots on a long term basis. There are, however, numerous leasehold strata plans where the developer leases the land from government, constructs improvements and registers a leasehold strata plan. The registration of the leasehold strata plan effectively converts the developer's ground lease into strata lot leases for each of the strata lots. The developer then assigns its leasehold interests in the strata lots to consumers. At the end of the lease term the government regains full ownership of the land. Since the owners of leasehold strata lots are effectively in the same position as the owners of conventional strata lots, they are not a focus of this review.

- Long term leases in BC are subject to the principles of contract and common law. Due to the absence of a specific regulatory structure, the contents of lease agreements can vary widely from one development to another. Disputes involving long term leases can be formally resolved only through the courts.

Guiding Principles

The following guiding principles will be applied in considering possible responses to life and long term lease issues:[5]

1. Proportionate Response – The response to all situations should be proportionate to the seriousness of each issue and the number of it people affects. The effort, cost and degree of regulation should be justified by a demonstrated need.
2. Direct Contribution to the Objective – Any regulatory provision that is considered should be clearly linked to achieving the objective.
3. Balance – The interests of both lessors and leaseholders should be respected and accommodated to the extent possible. Neither should be given an undue advantage or disadvantage.
4. Least Cost – The costs imposed by any regulatory measures should be considered, and the cost of regulatory measures minimized, consistent with meeting the objective.
5. Competitive Markets – To the extent possible, the response should promote the maximum level of competition among participants in the real estate sector. Any regulatory provisions should not result in a competitive advantage or disadvantage for leasehold properties in relation to other types of tenure being marketed, or raise unnecessary barriers to entry or exit.
6. Flexibility – To the extent possible, the response should be flexible to enable changes in market practice to be accommodated by regulators and those being regulated.
7. Accountability – Any regulatory measures being considered should ensure that those being regulated are responsible and

[5] These principles were adapted from the Ministry of Finance's guiding principles for the regulatory review of financial institutions.

accountable for complying with the requirements, and that regulators are accountable for applying the spirit and substance of the regulatory regime.

3. *Issues for Discussion*

Disclosure – Information given to potential lease purchasers

Potential lease purchasers need adequate information to make informed decisions when considering a life or long term lease contract.

Current Situation

- Part 2 of the *Real Estate Act,* administered by the Superintendent of Real Estate requires marketers of life lease and long term lease developments to provide disclosure statements to persons considering purchasing a life or long term lease. The statement includes information about the property and the lease, such as:
    - The terms and conditions of the lease
    - How the day-to-day operation of the development will be carried out and by whom
    - The costs leaseholders are required to pay
    - Any restrictions on the assignment* or sale of the lease
- The Superintendent can prohibit marketing that creates an unwarranted impression that a particular lease development carries no financial risk.
- The Superintendent has received very few disclosure statements concerning long term leases.
- Lease purchasers, at their discretion, may or may not obtain independent legal advice before purchasing.
- Misunderstandings have sometimes occurred when terms are not clearly spelled out in disclosure statements or leases. Purchasers have claimed that lessors have not lived up to verbal commitments or that they have neglected to tell them things. These may include the way in which fees are paid and returned, and features or services offered in the building.

Discussion Questions

1. Should lessors continue to be required to file a disclosure statement?

2. Do disclosure statements give enough information, and is it understandable?
3. What other types of information should potential purchasers have before committing themselves?
4. Are there other ways that this information could be provided to potential purchasers?

Deposit Security

Lease purchasers require assurance that deposit money they pay for units that are not yet constructed can be recovered if the lessor fails to meet obligations under the contract.

Current Situation

- Under BC real estate law, deposits for units in a multi-unit residential building must be held ***in trust*** while the building is being constructed, up until the time the unit is ready to occupy. It must be returned in full to the purchaser if the unit is not completed.
- A prospective ***life leaseholder*** provides two deposits to secure a unit. The first is a pre-purchase deposit paid to reserve a unit in a building under construction ($2,000 to $5,000). The second deposit, provided at the time the agreement is signed, is 20% to 25% of the entrance fee ($25,000 to $35,000).
- The law also gives lease purchasers a chance to change their mind within ***3 days*** after signing a contract and get their deposit back. This is called a "cooling off" period or "rescission" provision.
- If something is misrepresented in a disclosure statement, lease purchasers can sue the lessors and their directors for any loss they incur.

Discussion Questions

1. Are purchasers/lessors sufficiently aware of their protections under the law?
2. Are any further measures required?

Building Management

Both lessors and leaseholders have a significant interest in how decisions regarding the management of the building are made.

Current Situation

- A characteristic that life and long term leases have in common with condominiums is that lease purchasers pay a significant amount of money in entrance fees for the right to occupy their unit.
- A difference between life and long term leases and condominiums is that lessors maintain an ongoing interest in the quality and management of their buildings, even after all the units have been leased. Condominium units are usually sold to owners who then form a strata corporation,* which is responsible for managing and maintaining the common property and assets of the development for the benefit of all of its owners. The original developer does not usually remain involved in the building once the units are sold.
- If a building has been registered under the *Strata Property Act*, leaseholders are entitled to a vote in place of the owner in the strata corporation*. About one-third of life lease buildings are strata-titled*. There are no known long term lease developments that are strata-titled (except for condominiums built on leased land, defined as a leasehold strata plan under the *Strata Property Act*, which are not a focus of this review).
- If a building is not strata-titled*, there is no requirement that leaseholders be able to form or participate in any kind of governing body.
- Some leaseholders are exercising their votes in strata corporations; others are unaware that they have voting rights or do not wish to exercise them.
- Some developments have residents' councils that can advise the lessor on matters but their decisions are not legally binding unless it is stated in the lease.
- If the majority of units within a development are rented on a monthly basis, rather than leased on a long term basis, the long term leaseholders would have only a minority vote in the strata

corporation.

Discussion Questions

1. Who should have control over decisions about the management of a life or long term lease building? – Lessors; Leaseholders; Should it be shared?
2. How could the interests of both lessors and leaseholders be accommodated?
3. Could there be accommodation for those leaseholders who may want to opt out of any voting rights or management responsibilities?

Monthly Maintenance Fees

Leaseholders should be able to ensure that the fees they pay for maintenance are reasonable and are being assessed equitably.

Current Situation

- In cases where leaseholders have a vote in the strata corporation* (see the "Building Management" page), they are able to determine how fees are calculated, assessed and spent.
- Some lessors provide leaseholders with information on the setting and spending of maintenance fees and reserve funds at regular intervals. If a building is not strata-titled*, there are no laws requiring lessors to provide such information, or limiting how much or how often fees can be increased, or how much notice has to be given to leaseholders.

Discussion Questions

1. How much input should leaseholders have into the assessment and spending of maintenance fees and reserve funds?

   For example:

   - The lessor decides what information to provide to leaseholders and when
   - The lessor provides a statement on a regular basis
   - Leaseholders can request/advise the lessor on maintenance items and fees
   - Leaseholders and lessors jointly make decisions
   - Leaseholders make decisions

Reserve Funds and Insurance

The way in which lessors make provision for major replacement and repair expenses can have an effect on the costs leaseholders have to pay.

Current Situation

- BC law requires strata corporations* to maintain reserve funds to cover replacement of expensive items such as roofs and heating systems. These funds are collected as a part of the monthly maintenance fees. The law also requires financial statements to be made available to members.
- There is no requirement for non-strata developments* to maintain reserve funds.
- It is uncertain how many life and long term lease developments have reserve funds, or how much information is available to leaseholders.
- Both lessors and leaseholders are responsible for ensuring they carry adequate insurance.

Discussion Questions

1. Should all life lease developments be required to keep the same level of reserve funds that is required for strata developments?
2. Are leaseholders aware of what the lessor's insurance covers and what type of personal insurance they should have?
3. Are lessors aware of what type of insurance they should have?

Rules of Tenancy and Dispute Resolution

It is beneficial for both lessors and leaseholders to have a common understanding of building rules and policies, and a timely and inexpensive way of resolving disputes that may arise.

Current Situation

- There are currently no legal requirements or procedures to address matters in life and long term lease developments such as:
    - Rent increases (Most monthly payments are referred to as additional rent.)
    - Damages and repairs
    - Disagreements over payments; e.g. whether an expense should be paid by the lessor or the leaseholder
    - Behaviour that is endangering or bothering other leaseholders; e.g. noise, harassment, creating fire hazards
    - The right of the lessor to enter a leased unit
    - Criteria and notification period for eviction

  The tenancy is based only on the terms in the lease, and the courts are the only recourse for dispute resolution.
- Some leases require the leaseholder to leave if they are no longer capable of living independently. This is usually in life lease developments where services such as meals and housekeeping are included in the contract.
- The ways in which building rules and policies are made and changed depends on each individual lease. Leaseholders may have no input into how rules are changed or applied unless it is set out in the lease. Some leases do not explicitly state how the rules are set and the consequences for breaking them.
- If leaseholders have a voice in a strata corporation*, some of the issues that may arise between the lessor and leaseholders, or between individual leaseholders, may be dealt with through established legal procedures. However, leaseholders are still bound by the terms of their leases, which the strata corporation cannot override.

Discussion Questions

1. How should disputes between lessors and leaseholders be resolved?
2. Are lessors' and leaseholders' responsibilities with regard to building and unit maintenance clear?
3. Would the type of rules that now apply to landlords and tenants (the *Residential Tenancy Act*) be appropriate for lessors and leaseholders?
4. What types of protections do leaseholders need?
5. What types of protections do lessors need?
6. How much input should leaseholders have into writing and changing building rules?
7. By what method should a leaseholder be declared to be no longer capable of independent living?

Month-to-Month Rentals, Subletting and Assigning Leases

Both the lessor and leaseholder have an interest in the degree of flexibility that is permitted in renting units by the month and subletting* units and assigning* leases to other parties.

Current Situation

- For various reasons, lessors may choose to rent units in a single development both on a monthly basis and on a long term or life lease basis.
- Even when a lessor intends to lease all the units on a life or long term basis, there may not be enough demand, and they may need to rent units on a monthly basis in order to maintain enough income to run the building.
- There may also be times when life and long term leaseholders want to sublet their unit or assign their lease to someone else.
- The *Residential Tenancy Act* applies to rental agreements with a term of 20 years or less.
- Lessors are responsible for maintaining a quality living environment and therefore have an interest in ensuring that monthly renters or sublessees conform to the expectations they have of life and long term leaseholders.
- Some life and long term leaseholders have expressed concern that the monthly maintenance fees they pay may be partly going toward costs that should be paid by lessor in respect of units it rents on a monthly basis.

Discussion Questions

1. Are leaseholders sufficiently informed of a lessor's ability to rent units?
2. Should leaseholders have a say in the number of units in a development that can be rented?
3. What limits should lessors be able to place on a leaseholder's ability to sublet or assign a lease?

4. In developments where there are both life and long term leased units and monthly rental units, how can leaseholders be assured that they are paying their fair share of the maintenance costs?

Registration of Lease Agreements on Land Title

Registration of a lease on the land title provides legal protections for leaseholders. It also creates obligations.

Current Situation

- The registration of a life lease on the land title records a leaseholder's legal interest in the property.
- In the past few years, the Superintendent of Real Estate has required that life leaseholders' interests be evidenced on the land title. This can be done either by registering the lease on title, or by the lessor giving the leaseholder a mortgage on the unit, which is also entered on the title.
- Lack of registration limits a leaseholder's ability to obtain a mortgage. Only a few financial institutions will mortgage life and long term lease interests, and often do so only at premium rates.
- Should a development fall into foreclosure, a leaseholder's investment in the property is less secure if the lease is not registered on title.
- Purchasers of condominiums and single detached homes are required to pay the provincial Property Transfer Tax. The tax also apples to purchasers of leases of 30 years and over, including life leases, but is not levied unless a leaseholder registers their lease on the land title.
- Lessors sometimes discourage or prohibit leaseholders from registering their leases on title.

Discussion Questions

1. Should all leaseholders be required to register their leases on title? Are there reasons why they should not?

Applies to <u>life leases</u> only:

Return of Entrance Fee

Life leaseholders should be aware of the factors that will affect the return of their entrance fee when they terminate their leases.

Current Situation

- Entrance fees are repayable to the leaseholder on termination of the lease.
- Lessors usually withhold a portion of the entrance fee to cover costs of marketing and leasing the unit to a new leaseholder.
- Lessors sometimes incur other costs when a unit turns over, such as repairing damage.
- In some cases, lessors may use part of the fees they keep to expand facilities and common areas of the development.
- If leaseholders are responsible for finding someone to purchase their lease, they may have to pay real estate fees in addition to the administration fees charged by lessors.
- If several leaseholders want to terminate at the same time, the lessor may not have enough money to refund all of the entrance fees.
- Leaseholders may not understand that they may be subject to the same risks as homeowners with respect to fluctuations in the real estate market and the condition of the building.
- Leaseholders may not understand that their ability to get their money back depends on the financial health of the lessor.

Discussion Questions

1. Are leaseholders adequately informed about how much of their entrance fee will be returned and the risks if there is difficulty in finding a new lease purchaser?
2. Should there be a limit on the proportion of the entrance fee that a lessor can keep? What would a reasonable limit be?

3. What security should leaseholders be given in the event that a lessor cannot return their entrance fee?
   For example:
   - The right to sublease or assign the lease to another party
   - The ability to foreclose on the unit and sell it
   - Sinking funds, bonding, etc.
4. How should lessors be able to recover costs to repair damage to the unit when a leaseholder leaves?

4. Glossary

Assignment of a lease – A lessor transfers their lease to another party for the *entire remaining term* of the lease, i.e., the lease is *permanently* transferred to the other party.

Non-strata development – In this paper, this refers to multi-unit developments in which the units are not individually registered on the land title. There is a single land title for the whole development in the name of the owner.

Strata corporation – A legal body composed of the owners of a condominium development that is responsible for managing and maintaining the common property and common assets of the development. The members of the strata corporation elect a *strata council* to manage the corporation's business.

Strata-titling – The way in which a condominium is registered in the Land Title Office. The owner of each unit has legal title to the unit and a share in the common areas. In the case of life and long term leases, the lessor registers the building with a strata title but keeps ownership of all the units.

Subletting (subleasing) – A lessor transfers their lease to another party for a term that expires before the expiry date of the lease, i.e., the lease is transferred to another party *for a set period of time* and then transfers back to the original lessor.

5. Your Comments

- Please provide your comments on any or all of the subjects we have identified.
- It would be very helpful if you could tell us about any personal experience you have regarding the issues.
- We have also included a section for general comments.

Please indicate whether you are a:

Lessor

- ☐ ***For a** life lease **development***
- ☐ ***For a** long term lease **development***

Leaseholder

- ☐ ***In a** life lease **development***
- ☐ ***In a** long term lease **development***

Other (please specify):

_____

_____

_____

_____

_____

Thank you very much for your input. Comments can be sent to:

Housing Policy Branch
Ministry of Community Aboriginal and Women's Services

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Guiding Principles (Page 7)

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Disclosure – Information given to potential lease purchasers (Page 8)

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Deposit Security (Page 10)

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Building Management (Page 11)

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Monthly Maintenance Fees (Page 13)

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Reserve Funds and Insurance (Page 14)

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Rules of Tenancy and Dispute Resolution (Page 15)

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Month-to-Month Rentals, Subletting and Assigning Leases (Page 17)

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Registration of Lease Agreements on Land Title (Page 19)

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Return of Entrance Fee (Page 20)

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